

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES EX REL	.	Civil Action No. 1:09cv296
PAUL FUNK,	.	
	.	
Plaintiff,	.	
	.	
vs.	.	Alexandria, Virginia
	.	September 23, 2010
MISSION ESSENTIAL PERSONNEL,	.	10:00 a.m.
LLC; LANGUAGE LEARNING	.	
ENTERPRISES, INC.; and CEIBA	.	
ENTERPRISES, INC., d/b/a	.	
GRACOR LANGUAGE SERVICES, INC..	.	
	.	
Defendants.	.	
	.	
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TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR RELATOR:	KIT A. PIERSON, ESQ. Cohen Milstein Sellers & Toll PLLC 1100 New York Avenue, N.W. Suite 500, West Tower Washington, D.C. 20005 and MARK HANNA, ESQ. MICHELLE WOOLLEY, ESQ. Murphy Anderson PLLC 1701 K Street, N.W., Suite 210 Washington, D.C. 20006 and SCOTT NEWAR, ESQ. (by telephone) 700 Louisiana, 25th Floor Houston, TX 77002
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(APPEARANCES CONT'D. ON FOLLOWING PAGE)

(Pages 1 - 22)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 APPEARANCES: (Cont'd.)

2 FOR DEFENDANT MISSION
3 ESSENTIAL PERSONNEL:

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5 FOR DEFENDANT LANGUAGE
6 LEARNING ENTERPRISES:

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9 FOR DEFENDANT CEIBA
10 ENTERPRISES, INC.:

RYAN A. CORLE, ESQ.
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13 ALSO PRESENT:

ROBERT COZZIE

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1 P R O C E E D I N G S

2 THE CLERK: Civil Action 09-296, Paul Funk v. Mission
3 Essential Personnel, LLC, et al. Would counsel please note their
4 appearances for the record.

5 MR. HANNA: Good morning, Your Honor. Mark Hanna of
6 Murphy Anderson. I'm here with lead counsel, Mr. Kit Pierson,
7 whose pro hac vice was submitted yesterday, Your Honor. I'm also
8 here with Michelle Woolley of my firm, and Scott Newar, who's on
9 the phone, of Houston, Texas.

10 THE COURT: All right, that's fine.

11 MR. HANNA: Thank you, Your Honor.

12 THE COURT: And we'll take care of the paperwork on the
13 pro hac matter when it comes upstairs.

14 MR. PIERSON: Thank you, Your Honor.

15 MR. ANIKEEFF: Good morning, Your Honor. My name is
16 Anthony Anikeeff. I'm a partner with Williams Mullen. I
17 represent the men and women of Mission Essential Personnel.

18 With me in court today is my partner, Adam Casagrande,
19 and beside him a representative of MEP, Robert Cozzie.

20 THE COURT: All right.

21 MR. ANIKEEFF: I also have an associate, Will Wozniak,
22 who I will be moving for admission on the uncontested motion
23 docket, if that's all right, Your Honor.

24 THE COURT: Pro hac or admission to the Court itself?

25 MR. ANIKEEFF: Admission to the Court. We checked with

1 your office yesterday.

2 THE COURT: All right, that's fine.

3 MR. CORLE: Good morning, Your Honor. My name is Ryan
4 Corle, with the law firm of Jordan Coyne & Savits. I represent
5 Ceiba Enterprises, LLC, and with me this morning is my colleague,
6 Dwight Murray, who has been admitted pro hac.

7 THE COURT: All right, good morning.

8 MR. TOOF: Good morning. My name is Jackson Toof, from
9 the law firm of Arent Fox LLP. I represent Language Learning
10 Enterprises. With me is lead counsel, Maurice Bellan, and his pro
11 hac vice has been admitted.

12 THE COURT: All right, very good.

13 Why don't we take care of the preliminary matter now for
14 the one attorney. Do you have the paperwork with you?

15 MR. ANIKEEFF: Yes, Your Honor. It's -- would you step
16 forward?

17 Your Honor, it's my pleasure to introduce and move the
18 admission to the bar of this Court of William Alexander Wozniak.
19 He is an associate in the law firm of Williams Mullen. He is
20 working with us on this case.

21 I have known Will for some time. He is an upstanding
22 person, a person of good character, a good lawyer, and I believe
23 he would do credit to the bar of this Court.

24 THE COURT: All right. Mr. Wozniak, where did you go to
25 law school?

1 MR. WOZNIAK: George Washington.

2 THE COURT: And how about your undergraduate work?

3 MR. WOZNIAK: Virginia Tech.

4 THE COURT: So you're a local person.

5 MR. WOZNIAK: I am.

6 THE COURT: Very good. And how long have you been
7 practicing?

8 MR. WOZNIAK: About eight months.

9 THE COURT: All right. Well, we're pleased to grant the
10 motion, and the clerk will administer the affirmation to you at
11 this time.

12 (Attorney affirmation administered.)

13 THE COURT: All right, Mr. Wozniak, when the proceedings
14 are over, if you take this form down to the Clerk's Office,
15 they'll arrange for your certificate, and I think we'll probably
16 be seeing you in court for a while.

17 MR. WOZNIAK: Thank you.

18 THE COURT: Thank you.

19 All right. Now, that takes care of all of the
20 preliminary matters, although I did not hear anybody from the
21 United States government enter an appearance. Is there anyone
22 here from the government? They were notified about this hearing.

23 (No response.)

24 THE COURT: Have plaintiff's counsel had any contact
25 with anyone from the United States Attorney's Office?

1 MR. HANNA: Yes, Your Honor. I asked if they were going
2 to file any papers, and I heard that they were not going to file
3 papers, but I usually expect to see them here in False Claims Act
4 matters, so I don't know the answer to the question.

5 THE COURT: Well, especially when a motion to dismiss is
6 at issue.

7 MR. HANNA: Yes, Your Honor.

8 THE COURT: All right. Well, for the record, they were
9 noticed on all of the proceedings. They know about the hearing,
10 and they're not here. I deem that to be a waiver of any position
11 the government can take at this point.

12 All right, what is before the Court this morning are the
13 motions of all three defendants to dismiss the complaint for
14 failure, frankly, to comply with the heightened pleading
15 requirements of Federal Rule of Civil Procedure 9(b) and 12(b)(6)
16 as well, but 9(b) is the real problem for false claims cases,
17 because it has a significantly higher pleading standard.

18 I'm not sure yet whether in the aftermath of *Iqbal* and
19 *Twombly*, which would be the stricter pleading standard at this
20 point, because as you know, under *Iqbal-Twombly*, the pleadings
21 have to establish -- or allege specific facts to provide that it's
22 plausible that the plaintiff could prevail on a particular cause
23 of action, and I don't believe that 9(b) talks about plausibility,
24 but those are two different documents, but they both point to the
25 same fact and the same concern, which is that given the expense of

1 civil litigation, it's quite clear the message is being sent that
2 the courts are going to become stricter and stricter about
3 reviewing complaints to make sure that that expensive discovery
4 process does not start if there is not truly an indication of a
5 meritorious case.

6 And one of the problems I think the plaintiff has here
7 at least as to the two subcontractors, the more newly added
8 defendants who I think were just added in the first amended
9 complaint language -- I'm sorry, Learning Language Enterprises,
10 Inc., and Ceiba Enterprises, Inc., there really are no specifics
11 that are alleged whatsoever in that first amended complaint that
12 would comply either with 9(b) or *Iqbal-Twombly*, so I'd like the
13 plaintiff to first of all address that issue, and you have
14 requested in the alternative to just a straight dismissal, that
15 the Court dismiss without prejudice and give you an opportunity to
16 file a second amended complaint.

17 I guess what I want to know is if you were to file a
18 second amended complaint, I want an idea of the kind of
19 specificity you'd have available to you as to these other two
20 defendants.

21 MR. PIERSON: Thank you very much, Your Honor. I'm Kit
22 Pierson from Cohen Milstein.

23 Let me make a few observations and then get to your
24 question, which I agree is central to this. Now, I should tell
25 you in all candor that I've been retained in this case in the last

1 week and --

2 THE COURT: We knew you were new to the case, yeah.

3 MR. PIERSON: And I agreed to that retention, Your
4 Honor, frankly, because I have worked with the Guantanamo
5 detainees for years and had a sense of how important translation
6 was and after speaking extensively with the relator felt strongly
7 that this was a case we should be involved in.

8 There are, of course, disadvantages and advantages. The
9 disadvantages may be more obvious about appearing in a case so
10 recently. The disadvantage is that my familiarity with the facts
11 is getting up the curve, and I will be the first to admit that. I
12 think one of the advantages is that I do come to the case with a
13 fresh set of eyes and a bit of perspective, and I think your
14 question goes right to that.

15 Here is basically my perspective on the complaint and
16 where we are in your question. I think the case against MEP, I
17 don't think there's a substantial argument that there should be a
18 motion -- that the case against MEP should be dismissed, and
19 presumably I'll have some chance to elaborate on that today, but I
20 think that's just a bedrock False Claims Act case.

21 I agree with Your Honor that the allegations against the
22 two, the two other defendants are conclusory in the complaint and
23 that that raises an issue under *Twombly-Iqbal* or under rule 9(b),
24 so I want to give you my perspective on that.

25 First, I think as a matter of law, the defendants

1 basically have it wrong. I mean, there's a little bit of -- I
2 guess the law is a little bit unsettled with sort of how you deal
3 with these coconspirators in the false claims situation
4 post-*Twombly* and *Iqbal*, but where I think the law is probably
5 going is that, is that what needs to be shown here is not that
6 each of these defendants submitted false claims but that they --
7 there was sufficient allegations that they participated in a
8 conspiracy to violate the False Claims Act and that there was, in
9 fact, an overt act by any of the defendants in furtherance of that
10 conspiracy.

11 There clearly were overt acts here, so fundamentally the
12 question is whether, whether there's evidence that they engaged in
13 a conspiracy and whether it's sufficiently specific to satisfy the
14 requirements at least of *Twombly* and *Iqbal*, specific and
15 plausible.

16 And I agree with you that the allegations that are in
17 the complaint as currently drafted are, they are conclusory, so
18 there are a couple observations I would make about that. One, I
19 do believe based on the investigation we've done so far that we
20 can make specific allegations against these other defendants that
21 would be sufficient to get beyond a motion to dismiss for purposes
22 of alleging a conspiracy.

23 Some of those allegations -- and this goes to your
24 specific question -- is that, that they were using a practice that
25 everyone in the industry knew would facilitate fraud. The

1 practice of using these oral exams, where all they're doing is
2 getting somebody on the phone, is a little bit like letting
3 someone take the bar exam over the phone, but it's even worse in
4 this context, because these are \$200,000-a-year jobs that may go
5 to people that are otherwise relatively unskilled that have no
6 alternative, so anyone that was experienced in the industry such
7 as these defendants would know that the basic practice they were
8 using was inviting fraud.

9 If we amend the complaint against these defendants, we
10 would allege that Mr. Funk was told by one of his subordinates
11 that LLE was giving passing grades to people that had turned in
12 blank sheets of paper on written exams.

13 THE COURT: And he can identify the subordinate who told
14 him that?

15 MR. PIERSON: He can identify the person that told him
16 that. We can also identify seven or eight individuals where we
17 believe that occurred based on what he was told.

18 We would also allege that failing test scores -- that
19 after he complained about people have failing test scores -- and
20 the test scoring, as we understand it, was done by LLE and its
21 successor -- after, after failing test -- after he learned of
22 failing test scores, the scores were changed for some of those
23 applicants, so that only days after he had learned that they were
24 failing, they suddenly were no longer failing scores.

25 The last allegation that is specific to these -- and

1 frankly, Your Honor, at this point, I want to be very clear in my
2 own mind before we amend the complaint about there's a transition
3 from LLE to the successor Gracor, or Ceiba, and I'm going to need
4 to be clear when we amend the complaint on what the timeline is on
5 these, you know, when they transition from one defendant to the
6 other defendant.

7 I don't want to make any -- I'm not in a position to
8 make representations about that to you now, so I want to get a
9 clear understanding of that, but the other fact that Mr. Funk
10 learned was that some of the people taking written tests were
11 using a cheat sheet, and the cheat sheet was a test form -- as I
12 understand it, it was a test form from, from either LLE or the
13 successor company that basically gave the questions that were
14 going to be asked on the exam and then gave them English
15 translations of what the right answers was, and that's something
16 Mr. Funk knows from his personal knowledge, because they
17 confessed -- several of the applicants after being confronted with
18 this and after the cheat sheet was found confessed to him that
19 they did have a cheat sheet. So someone was giving them the
20 answers from the -- the questions and answers from the testing
21 service.

22 What, what I believe, Your Honor, from all that is
23 basically two things: One, I think there is a substantial basis
24 for alleging that they were, in fact, participants in the fraud
25 and for inferring from that that there was a conspiracy. They had

1 no incentive to do this on their own. They had an incentive to do
2 it if they were doing it in concert with MEP, who had
3 subcontracted to them.

4 So based on what I know right now, I mean, I do want to
5 be clear about the timelines as we do our investigation. There
6 are allegations of co-conspiracy that could be made against one or
7 both of these testing companies.

8 The one issue that I would say, frankly thinking about,
9 is what is clear as we go forward is that there's going to be a
10 lot of discovery focused on MEP, and there will necessarily be
11 discovery related to these other entities, whether they're third
12 parties or whether they're defendants, and the question that I'm
13 wrestling with in my early entry in the case is whether the more
14 sensible thing to do is go ahead and proceed with that discovery
15 against them and to see where it leads and to see how substantial
16 the case against them is and whether they really are -- whether it
17 rises to a level that really makes it not just legally sufficient
18 but appropriate to proceed with them as a defendant in the case or
19 whether the better course would be just to proceed against MEP.

20 So what I think the bottom line on that is for me, Your
21 Honor, is that what we would request to do, regardless of the
22 disposition of this motion, we will be seeking leave to amend the
23 complaint within two or three weeks, depending on what the Court
24 permits, and, and the allegations that I just made will
25 undoubtedly be in the amended complaint, and I think the judgment

1 we'll need to make is whether it's appropriate at that time to
2 name the other, the other current defendants as coconspirators, to
3 include them as defendants, or to simply include the allegations
4 and see where discovery takes us and find out the scope of their
5 involvement, and frankly, at this point, Your Honor, I haven't
6 made a decision about, about what the most appropriate way to
7 proceed in that regard is.

8 THE COURT: All right.

9 MR. PIERSON: That was a long answer to your question,
10 and I apologize. Did I answer your question?

11 THE COURT: You did actually, yes. I mean, I'm
12 concerned about this case because the allegations are very
13 serious. The issue of possible fraud against the United States
14 government in connection with the war in Afghanistan and this
15 issue of translators -- this is not the first case we've had
16 involving translator services issues -- is very troubling to me.

17 I -- from what the government indicated during the time
18 period the case was under seal, and they apparently are still
19 looking at it themselves independently, and I guess at any point,
20 they could choose to come in, correct?

21 MR. PIERSON: They could, Your Honor.

22 THE COURT: Yeah. Obviously, there's a lot at stake in
23 this case, especially for Mission Essential Personnel, which is a
24 significant government contractor, there's also a lot of issue in
25 this case. If they were found to be liable on any of these

1 claims, I suspect they would be facing significant debarment
2 potential, and you can see where I'm going with that as well, and
3 that is, a case like this, if it hasn't already been looked at,
4 should be considered by counsel for possible early settlement. I
5 would suspect that the discovery in this case could be fairly
6 complicated.

7 Now, these translators, some of them are overseas
8 people, correct?

9 MR. PIERSON: They are, Your Honor, some of them.

10 THE COURT: And so we just had a case like this where
11 there were going to be, I don't know, 20 or 30 depositions that
12 were going to have to be taken in the Middle East. That is
13 logistically and financially complicated. It's doable, but it's
14 something that counsel on all sides should be thinking about.

15 Given the position that Mr. Funk had, as I understand
16 it, sort of as the reviewer of this process at one point, I would
17 think that he would have pretty good access to the information.
18 As I read the complaint, I mean, this is a complaint where the
19 complainant says he has direct knowledge, not this is inferential,
20 which impressed me.

21 And some of the issues in this case struck me as being
22 fairly concrete. There's the DOMEX billing matter. I would have
23 assumed that both the defendant and -- MEP and the plaintiff would
24 already have some discovery or some idea about the specifics of
25 that.

1 MR. PIERSON: Yeah. In fact, Your Honor, from speaking
2 with Mr. Funk, I would just note -- and, of course, time will bear
3 this out or it won't -- I got involved in this case, I believe
4 that Mr. Funk is highly credible and, in fact, in some respects a
5 hero, and I base that not only on years of work in connection with
6 Guantanamo, which gives me some familiarity with this, but almost
7 30 years in the practice of law, and that is why I became involved
8 in the case.

9 With regard to DOCEX and DOMEX, my understanding is
10 that, is that we do have pretty specific information that we can
11 add to this. I mean, the basic allegation relating to DOMEX is
12 pretty straightforward. People were only working 10 hours a week
13 and were routinely being billed at 40 hours a week to the
14 government, and the allegations get a little uglier than that, but
15 that's, that's the guts of it, and my understanding is that we
16 actually -- we're certainly in a position to describe the time
17 period in which that occurred, the location at which it occurred,
18 the method by which it occurred, the invoices on which it
19 occurred, not on an invoice-specific basis but the nature of the
20 invoices, and I think we can also list the individuals for whom we
21 believe that occurred.

22 THE COURT: All right. Well, that obviously would be
23 the icing on the cake --

24 MR. PIERSON: Yeah.

25 THE COURT: -- and so what I am going to do is I am

1 granting all three motions to dismiss.

2 I'm going to dismiss the first amended complaint as of
3 today without prejudice. I'm going to give you -- we've already
4 got a discovery order -- schedule in this case, so I can't give
5 you too much time. I think two weeks is more than sufficient.

6 MR. PIERSON: That's fine.

7 THE COURT: And I do expect based upon the comments in
8 court today that you will be extremely judicious in looking at how
9 you structure that second amended complaint.

10 I also strongly suggest if your evidence is as concrete
11 and strong as you say it is, you know, in civil cases, you really
12 don't benefit by hiding stuff. I'd start talking with opposing
13 counsel. If it's there, it's there, and they will be able to then
14 evaluate what their positions ought to be. All right?

15 MR. PIERSON: Your Honor, I'm just in complete agreement
16 with the observations you're making. I mean, we appreciate the
17 gravity of the allegations for the defendants to some degree from
18 Mr. Funk, but most importantly for what's going on in Afghanistan,
19 and if there's a way to have a frank dialogue with them and share
20 the information that we have and expedite discovery with them and
21 to see if, see if there are ways to resolve this in a sensible way
22 that perhaps as importantly as anything else furthers the mission
23 overseas, we are totally receptive to all of that.

24 THE COURT: Now, remember, the government has to sign
25 off.

1 MR. PIERSON: Well, I understand, Your Honor.

2 THE COURT: And I should tell you, Judge Anderson is
3 phenomenal at settling cases. He's the magistrate judge assigned
4 to this case. If you feel you can't do it by yourselves, you
5 would be extremely wise to ask him to intervene as quickly as
6 possible, because you do have, you know, the scheduling order is
7 an issue, and your discovery cutoff is January 14.

8 MR. PIERSON: Could I ask you one question, Your Honor?

9 THE COURT: Yeah.

10 MR. PIERSON: Which is -- because I'm acutely aware of
11 the discovery schedule and what it has done to my December 30
12 birthday, and I guess the one issue about amending the complaint
13 is I would -- we would like to get discovery requests out to them
14 soon, and the only issue in my mind is whether we now need to wait
15 until the complaint is amended.

16 THE COURT: You do not. I mean, that clock is ticking.
17 Both sides can be making discovery demands upon each other, all
18 right?

19 MR. PIERSON: All right. Thank you very much, Your
20 Honor.

21 THE COURT: Do I need to hear anything from defense
22 counsel? I mean, as I said, I would strongly suggest at this
23 point, it's early on in the game, that you think about talking
24 concretely with opposing counsel, and if you think getting with
25 Judge Anderson early on would help, feel free to do so.

1 Yes, sir.

2 MR. ANIKEEFF: Your Honor, if Your Honor has made her
3 ruling --

4 THE COURT: I have.

5 MR. ANIKEEFF: -- then we'll accept it.

6 We could ask to reconsider on the grounds that we
7 strongly believe that plaintiff, who has had this case for a year
8 and a half, he is the consummate insider. He says he knows all
9 the facts. His complaint was strewn with the names of many people
10 at MEP, and not once has he come forward with a specific
11 allegation.

12 THE COURT: Well, I have to tell you I understand that.
13 I mean, I've read your briefs, and I know that you feel they've
14 already had one opportunity to amend, but in terms of the
15 complaints that come through here, there's far more meat on the
16 bones of this complaint than there is on the standard civil one,
17 quite frankly.

18 Now, I understand it's a false claims case. Even
19 then -- and, you know, the exhibits that were attached, now, they
20 were not 100 percent genuine in the sense that they were
21 represented to be MEP documents, and, in fact, they were spread
22 sheets made from MEP data, as I understand it.

23 Nevertheless, that's a lot of specificity, and, you
24 know, when a plaintiff puts that degree of specificity in the
25 complaint, it really is -- it really does put the plaintiff at

1 some exposure. I have seen at trial very effective use made of
2 allegations in a complaint for which there was no evidence or
3 contradictory evidence during the trial, and I have seen some very
4 fine trial attorneys reading from the verified complaint to the
5 jury, saying, you know, this is what the plaintiff said to the
6 Court under a verified statement: Blah, blah, blah, blah, blah,
7 and, folks, there was no evidence of that whatsoever in this case,
8 or we've shown just the opposite. So -- and we have experienced
9 counsel representing the plaintiff.

10 But I do think in this case -- and part of it is the
11 gravity of the issues involved. The war contracting problems are
12 real, and I want to make sure that we've addressed all those cases
13 very carefully, but in this case, I have ruled.

14 I recommend strongly you think early on about
15 settlement, if that's a potential, and again, the government would
16 have to be involved, which does make these types of settlements
17 complicated. I've done them before, and I know how that can
18 happen, but within two weeks, you'll see the amended complaint.
19 That will be the second amended complaint. We seldom allow a
20 third, so I want everybody on notice.

21 And then I'll give the defendants ten days to respond
22 either through -- have you answered yet?

23 MR. ANIKEEFF: No, Your Honor.

24 THE COURT: You have not.

25 MR. ANIKEEFF: We moved to dismiss.

1 THE COURT: Then you'll have ten days in which to file
2 an answer to the second amended complaint or another round of
3 dispositive motions.

4 MR. ANIKEEFF: Your Honor, we're going to make one other
5 request. For whatever reason, Mr. Funk has seen that litigating
6 this case in court is not enough. He's appeared on nationwide TV,
7 on *ABC News*, on *Nightline*, and in various media.

8 We would request that the Court order or direct Mr. Funk
9 to confine his litigation to this case in this Court so that we
10 don't also have to fight this battle on the public airwaves. In
11 *Harrison I*, the court said that one of the reasons for a motion to
12 dismiss is so that the reputation of a company such as Mission
13 Essential Personnel would not be sullied.

14 Your Honor has already indicated how severe these
15 applications are, and they stick on a wall like mud on an
16 unplastered wall, and it's going to take a long time for MEP to
17 clean that wall, and we're going to do it through this Court, but
18 it doesn't help when it's carried on in the media, where we don't
19 have an equal opportunity and our name continues to be sullied,
20 and it was why we did move to dismiss, because we believe however
21 severe the allegations are, they were not substantiated.

22 Your Honor has ruled. We will deal with the amended
23 complaint appropriately, but we'd ask that this litigation be
24 confined to this Court. Thank you.

25 MR. PIERSON: Your Honor, what I would suggest -- I will

1 tell you --

2 THE COURT: You've got a great voice, but I still want
3 you at the lectern.

4 MR. PIERSON: I will tell you, Your Honor, that perhaps
5 to a fault, it has never been my practice to litigate cases in the
6 media. It's not something I'm very comfortable with, and it's not
7 what I do.

8 With that said, as Your Honor's comments reflect, this
9 is a matter of enormous public concern, and what I would suggest
10 since this issue is essentially being raised for the first time
11 here, if they're seriously suggesting there should be a gag order
12 of some sort on Mr. Funk, that that's an issue that should be
13 briefed.

14 THE COURT: I'm not imposing a gag order. In criminal
15 cases, there's a different kind of concern. At this point, you
16 know, you're all significantly experienced counsel. It's
17 dangerous for a party litigant to get out there and say things in
18 the public. Again, it can come back to haunt at the trial.

19 I think, you know, you-all are good counsel. You should
20 talk with your client and appropriately control him, but he has a
21 First Amendment right to speak, as does the defendant, who can
22 also speak to defend itself, and at this point, I -- of course, I
23 don't spend a lot of time with the media -- will start looking for
24 public comment on this case from here on out, but I haven't seen
25 it come up a great deal where it's gotten my attention. When I

1 have a case and I hear things in the press about it, I usually
2 remember it.

3 So that's all I'm going to do at this point, but I'm not
4 a big fan of gag orders, so the request is denied.

5 MR. PIERSON: Thank you, Your Honor.

6 THE COURT: If something else happens and something gets
7 worse or if there's some problem with confidential information
8 that's getting leaked out, that's a different situation, all
9 right?

10 All right, we'll recess court until 3:00.

11 (Which were all the proceedings
12 had at this time.)

13
14 CERTIFICATE OF THE REPORTER

15 I certify that the foregoing is a correct transcript of the
16 record of proceedings in the above-entitled matter.

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/s/

Anneliese J. Thomson